OFFERYNNAU STATUDOL CYMRU

WELSH STATUTORY INSTRUMENTS

2024 Rhif 28 (Cy. 11)

2024 No. 28 (W. 11)

ADDYSG, CYMRU

EDUCATION, WALES

Rheoliadau Ysgolion Annibynnol (Gwaharddiad ar Gymryd Rhan mewn Rheoli) (Cymru) 2024

The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn rhagnodi ar ba seiliau y caniateir i gyfarwyddyd gael ei roi o dan adran 167A o Ddeddf Addysg 2002 ("cyfarwyddyd adran 167A") sy'n gwahardd person rhag cymryd rhan yn y gwaith o reoli ysgol annibynnol yng Nghymru, neu sy'n cyfyngu ar allu person i wneud hynny. Mae'r Rheoliadau hefyd yn gwneud darpariaeth ynghylch y weithdrefn ar gyfer rhoi cyfarwyddyd adran 167A, yr amgylchiadau y caniateir i gyfarwyddyd adran 167A gael ei amrywio neu ei ddirymu odanynt a darpariaeth ynghylch apelau mewn cysylltiad â chyfarwyddydau adran 167A.

Caniateir i gyfarwyddydau adran 167A gael eu rhoi mewn cysylltiad â pherson sydd wedi ei euogfarnu o drosedd berthnasol, sydd wedi cael rhybuddiad mewn cysylltiad â throsedd berthnasol, neu sy'n ddarostyngedig i ganfyddiad perthnasol mewn cysylltiad â throsedd berthnasol, neu sydd wedi ymgymryd ag ymddygiad perthnasol, os yw'r awdurdod priodol (Gweinidogion Cymru) yn ystyried bod y person felly yn anaddas i gymryd rhan yn y gwaith o reoli ysgol annibynnol (rheoliad 2). Mae adran 167A o Ddeddf Addysg 2002 yn darparu'r pwerau i'r "appropriate authority" i ddyroddi cyfarwyddyd. Ystyr "appropriate authority" ("*awdurdod priodol*") yw awdurdod cofrestru neu unrhyw awdurdod cyhoeddus arall a ragnodir. Yr awdurdod cofrestru yw Gweinidogion Cymru ac felly yr awdurdod priodol at ddibenion y cyfarwyddyd adran 167A yw Gweinidogion Cymru.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the grounds on which a direction may be given under section 167A of the Education Act 2002 ("section 167A direction") prohibiting a person from taking part in the management of an independent school in Wales, or placing a restriction on a person's ability to do so. The Regulations also make provision about the procedure for giving a section 167A direction, the circumstances in which a section 167A direction may be varied or revoked and provision about appeals in respect of section 167A directions.

Section 167A directions may be given in respect of a person who has been convicted of, been given a caution in respect of, or is subject to a relevant finding in respect of a relevant offence, or has engaged in relevant conduct, if the appropriate authority (the Welsh Ministers) considers that the person is therefore unsuitable to take part in the management of an independent school (regulation 2). Section 167A of the Education Act 2002 provides the "appropriate authority" with the powers to issue a direction. An appropriate authority means a registration authority or such other public authority as may be prescribed. The registration authority is the Welsh Ministers and therefore the appropriate authority for the purposes of the section 167A direction is the Welsh Ministers.

Mae rheoliad 2 yn rhagnodi ar ba seiliau y caniateir i gyfarwyddyd adran 167A gael ei roi ac yn disgrifio'r hyn a olygir gan drosedd berthnasol, canfyddiad perthnasol, ac ymddygiad perthnasol at y diben hwn. Mae rheoliad 2 hefyd yn darparu bod cyfeiriadau at euogfarnau a rhybuddiadau yn cynnwys y rheini sydd wedi eu disbyddu ar yr amod bod gorchymyn wedi ei wneud sy'n eithrio gweithredu darpariaethau Deddf Adsefydlu Troseddwyr 1974 sy'n gwahardd euogfarnau a rhybuddiadau sydd wedi eu disbyddu rhag cael eu defnyddio fel sail dros eithrio person o unrhyw swydd, proffesiwn, galwedigaeth neu gyflogaeth.

Regulation 2 prescribes the grounds on which a section 167A direction may be given and describes what amounts to a relevant offence, relevant finding, and relevant conduct for this purpose. Regulation 2 also provides that references to convictions and cautions include those that are spent provided there has been an order made excluding the operation of provisions of the Rehabilitation of Offenders Act 1974 which prohibit spent convictions and cautions being used as a ground to exclude a person from any office, profession, occupation or employment.

Cyn gwneud cyfarwyddyd adran 167A, rhaid i'r awdurdod priodol roi cyfle i'r person i gyflwyno sylwadau o ran pam na ddylid rhoi'r cyfarwyddyd a hysbysiad am y cyfle hwnnw (rheoliad 3). Mae rheoliad 3 yn gwneud darpariaeth ynghylch rhoi'r hysbysiad a'r cyfnod y caniateir i sylwadau gael eu cyflwyno ynddo. Rhaid cymryd pob cam rhesymol i hysbysu person y mae cyfarwyddyd adran 167A wedi ei wneud mewn cysylltiad ag ef.

Before making a section 167A direction, the appropriate authority must give the person an opportunity to make representations as to why the direction should not be given and notice of that opportunity (regulation 3). Regulation 3 makes provision about the giving of the notice and the period within which representations may be made. All reasonable steps must be taken to notify a person in respect of whom a section 167A direction has been made.

Caiff yr awdurdod priodol amrywio neu ddirymu cyfarwyddyd pan fo person yn ceisio ei gael wedi ei ddirymu ar un o'r seiliau a nodir yn rheoliad 5, neu pan na fo person yn ceisio ei gael wedi ei amrywio neu wedi ei ddirymu, pan fo gwybodaeth newydd yn dod i law neu pan fo newid perthnasol wedi bod yn amgylchiadau'r person sy'n ddarostyngedig i'r cyfarwyddyd, ar yr amod ym mhob achos fod yr awdurdod priodol yn ystyried ei bod yn briodol ei amrywio neu ei ddirymu (rheoliad 4).

The appropriate authority may vary or revoke a direction where a person seeks to have it revoked on one of the grounds set out in regulation 5, or in the absence of variation or revocation being sought, where new information comes to light or where there has been a material change in circumstances of the person subject to the direction, provided in all cases that the appropriate authority considers it appropriate to vary or revoke (regulation 4).

O dan reoliad 5, caiff person sy'n ddarostyngedig i gyfarwyddyd adran 167A geisio ei gael wedi ei amrywio neu wedi ei ddirymu ar y sail bod yr euogfarn, y rhybuddiad neu'r canfyddiad o dan sylw wedi ei diddymu neu wedi ei ddiddymu, bod yr euogfarn neu'r rhybuddiad o dan sylw wedi ei disbyddu neu wedi ei ddisbyddu neu'n dod yn warchodedig, neu fod cyfnod o bum mlynedd wedi mynd heibio ers i'r canfyddiad o dan sylw gael ei wneud. Caiff person sy'n ddarostyngedig i gyfarwyddyd ar sail ymddygiad geisio ei gael wedi ei amrywio neu wedi ei ddirymu ar y sail bod gwybodaeth newydd wedi dod i law neu pan fo newid perthnasol wedi bod yn amgylchiadau'r person sy'n ddarostyngedig i'r cyfarwyddyd.

Under regulation 5, a person subject to a section 167A direction may seek to have it varied or revoked on the grounds that the conviction, caution or finding in question has been quashed, that the conviction or caution in question is spent or becomes protected, or that a period of five years has passed since the finding in question was made. A person subject to a direction on conduct grounds may seek to have it varied or revoked on the grounds that new information has come to light or where there has been a material change in circumstances of the person subject to the direction.

Mae adran 167B(1) o Ddeddf Addysg 2002 yn darparu ar gyfer hawl i apelio yn erbyn penderfyniadau mewn cysylltiad â chyfarwyddydau adran 167A. Mae rheoliad 6 yn cynnwys cyfyngiad ar bŵer y Tribiwnlys Haen Gyntaf i ystyried apelau mewn perthynas â chyfarwyddydau adran 167A a roddir ar sail euogfarnau. Mae rheoliad 7 yn darparu ar gyfer

Section 167B(1) of the Education Act 2002 provides for a right of appeal against decisions in respect of section 167A directions. Regulation 6 contains a restriction on the power of the First-tier Tribunal to entertain appeals in relation to section 167A directions which are given on the grounds of convictions. Regulation 7 provides for the First-tier Tribunal's

pwerau'r Tribiwnlys Haen Gyntaf ar ganiatáu apêl mewn perthynas â chyfarwyddyd adran 167A. Pan fo'r Tribiwnlys Haen Gyntaf yn ystyried nad yw'r penderfyniad i roi'r cyfarwyddyd, neu nad yw'r penderfyniad i beidio â'i amrywio neu ei ddirymu, yn briodol caiff orchymyn i'r awdurdod priodol amrywio neu ddirymu'r cyfarwyddyd.

Mae rheoliad 8 yn nodi'r amgylchiadau y bydd person sy'n ddarostyngedig i gyfarwyddyd o dan adran 142 o Ddeddf Addysg 2002 yn union cyn i adran 167A o Ddeddf Addysg 2002 ddod i rym yn cael ei drin fel pe bai'n ddarostyngedig i gyfarwyddyd adran 167A gan ddechrau â'r diwrnod y daw'r Rheoliadau i rym.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac fe'i cyhoeddir ar www.llyw.cymru.

powers on allowing an appeal in relation to a section 167A direction. Where the First-tier Tribunal considers that the decision to give the direction, or the decision not to vary or revoke it, is not appropriate it may order the appropriate authority to vary or revoke the direction.

Regulation 8 sets out the circumstances in which a person subject to a direction under section 142 of the Education Act 2002 immediately before the coming into force of section 167A of the Education Act 2002 will be treated as being subject to a section 167A direction starting with the day the Regulations come into force.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

2024 Rhif 28 (Cy. 11)

ADDYSG, CYMRU

Rheoliadau Ysgolion Annibynnol (Gwaharddiad ar Gymryd Rhan mewn Rheoli) (Cymru) 2024

Gwnaed	*11 Ionawr 2024*
Gosodwyd gerbron Senedd Cymru	*15 Ionawr 2024*
Yn dod i rym	*14 Chwefror 2024*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 167A, 167B(2) a 210(7) o Ddeddf Addysg 2002(**1**) ac adrannau 171(1) a (2) a 181(2) o Ddeddf Addysg ac Arolygiadau 2006(**2**).

Enwi, cychwyn a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Ysgolion Annibynnol (Gwaharddiad ar Gymryd Rhan mewn Rheoli) (Cymru) 2024 a deuant i rym ar 14 Chwefror 2024.

(**1**) 2002 p. 32. Mewnosodwyd adrannau 167A a 167B yn Neddf Addysg 2002 gan adran 169 o Ddeddf Addysg ac Arolygiadau 2006. Diwygiwyd adran 167A gan baragraffau 13, 22(a) a (b) o Atodlen 1(1) i Ddeddf Addysg a Sgiliau 2008 (p. 25) a chan Atodlen 2 iddi. Diwygiwyd adran 167B gan baragraffau 192 a 196 o Atodlen 3 i Orchymyn Trosglwyddo Swyddogaethau Tribiwnlysoedd 2008 (O.S. 2008/2833). Diwygiwyd adran 210(7) gan adran 21(3) o Fesur Teithio gan Ddysgwyr (Cymru) 2008 (mccc 2). Mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol i'r Rheoliadau hyn. Am ystyr "appropriate authority" ("*awdurdod priodol*") gweler adran 167A(6)(b). Am ystyr "registration authority" ("*awdurdod cofrestru*") gweler adran 171. Am ystyr "prescribed" ("*rhagnodedig*") a "regulations" ("*rheoliadau*") gweler adran 212(1). Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru gan baragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32).

(**2**) 2006 p. 40. Diwygiwyd adran 171 gan erthygl 13(1) a (2)(f) o Orchymyn Deddf Diogelu Rhyddidau 2012 (Trosglwyddo Swyddogaethau i'r Gwasanaeth Datgelu a Gwahardd) 2012 (O.S. 2012/3006) a pharagraffau 37 a 40(2) o Atodlen 1 i Ddeddf Addysg a Sgiliau 2008 (p. 25). Diwygiwyd adran 181(2) gan adran 23(3) o Fesur Teithio gan Ddysgwyr (Cymru) 2008 (mccc 2).

2024 No. 28 (W. 11)

EDUCATION, WALES

The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024

Made	*11 January 2024*
Laid before Senedd Cymru	*15 January 2024*
Coming into force	*14 February 2024*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 167A, 167B(2) and 210(7) of the Education Act 2002(**1**) and sections 171(1) and (2) and 181(2) of the Education and Inspections Act 2006(**2**).

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 and they come into force on 14 February 2024.

(**1**) 2002 c. 32. Sections 167A and 167B were inserted into the Education Act 2002 by section 169 of the Education and Inspections Act 2006. Section 167A was amended by paragraphs 13, 22(a) and (b) of Schedule 1(1) and by Schedule 2 to the Education and Skills Act 2008 (c. 25). Section 167B was amended by paragraphs 192 and 196 of Schedule 3 to the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833). Section 210(7) was amended by section 21(3) of the Learner Travel (Wales) Measure 2008 (nawm 2). There are other amending instruments but none is relevant to these regulations. For the meaning of "appropriate authority" see Section 167A(6)(b). For the meaning of "registration authority" see Section 171. For the meaning of "prescribed" and "regulations" see section 212(1). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) 2006 c. 40. Section 171 was amended by article 13(1) and (2)(f) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006) and paragraphs 37 and 40(2) of Schedule 1 to the Education and Skills Act 2008 (c. 25). Section 181(2) was amended by section 23(3) of the Learner Travel (Wales) Measure 2008 (nawm 2).

(2) Yn y Rheoliadau hyn—

ystyr "cyfarwyddyd adran 167A" ("*section 167A direction*") yw cyfarwyddyd a roddir o dan adran 167A o Ddeddf 2002;

ystyr "Deddf 2002" ("*the 2002 Act*") yw Deddf Addysg 2002;

ystyr "Deddf 2006" ("*the 2006 Act*") yw Deddf Addysg ac Arolygiadau 2006;

mae i "rhybuddiad" yr ystyr a roddir i "caution" gan adran 8A(2) o Ddeddf Adsefydlu Troseddwyr 1974(**1**);

mae i "ysgol annibynnol" yr ystyr a roddir i "independent school" gan adran 463 o Ddeddf Addysg 1996(**2**).

Y seiliau rhagnodedig dros gyfarwyddyd adran 167A

2.—(1) Y seiliau rhagnodedig y caniateir i gyfarwyddyd adran 167A gael ei roi mewn cysylltiad â pherson arnynt yw—

(a) bod y person—

(i) wedi ei euogfarnu o drosedd berthnasol,

(ii) wedi cael rhybuddiad mewn cysylltiad â throsedd berthnasol,

(iii) yn ddarostyngedig i ganfyddiad perthnasol mewn cysylltiad â throsedd berthnasol, neu

(iv) wedi ymgymryd ag ymddygiad perthnasol, a

(b) bod yr awdurdod priodol yn ystyried bod y person, oherwydd yr euogfarn honno, y rhybuddiad hwnnw, y canfyddiad hwnnw neu'r ymddygiad hwnnw, yn anaddas i gymryd rhan yn y gwaith o reoli ysgol annibynnol.

(2) At ddibenion paragraff (1), mae trosedd yn berthnasol os yw'n berthnasol i addasrwydd person i gymryd rhan yn y gwaith o reoli ysgol annibynnol.

(2) In these Regulations—

"the 2002 Act" ("*Deddf 2002*") means the Education Act 2002;

"the 2006 Act" ("*Deddf 2006*") means the Education and Inspections Act 2006;

"caution" ("*rhybuddiad*") has the meaning given by section 8A(2) of the Rehabilitation of Offenders Act 1974(**1**);

"independent school" ("*ysgol annibynnol*") has the meaning given by section 463 of the Education Act 1996(**2**);

"section 167A direction" ("*cyfarwyddyd adran 167A*") means a direction given under section 167A of the 2002 Act.

Prescribed grounds for a section 167A direction

2.—(1) The prescribed grounds on which a section 167A direction may be given in respect of a person are that—

(a) the person—

(i) has been convicted of a relevant offence,

(ii) has been given a caution in respect of a relevant offence,

(iii) is subject to a relevant finding in respect of a relevant offence, or

(iv) has engaged in relevant conduct, and

(b) because of that conviction, caution, finding or conduct, the appropriate authority considers that the person is unsuitable to take part in the management of an independent school.

(2) For the purposes of paragraph (1), an offence is relevant if it is relevant to a person's suitability to take part in the management of an independent school.

(**1**) 1974 p. 53. Mewnosodwyd adran 8A gan adran 49 o Ddeddf Cyfiawnder Troseddol a Mewnfudo 2008 (p. 4) a pharagraffau 1 a 3 o Atodlen 10 iddi. Diwygiwyd is-adran (2) o adran 8A gan adrannau 135 a 141 o Ddeddf Cymorth Cyfreithiol, Dedfrydu a Chosbi Troseddwyr 2012 (p. 10), paragraffau 1 a 2 o Atodlen 24 iddi a pharagraffau 1 ac 8 o Atodlen 25 iddi, a chan adran 119 o Ddeddf yr Heddlu, Troseddu, Dedfrydu a'r Llysoedd 2022 (p. 32) a pharagraffau 1 a 2(b) o Atodlen 11 iddi.

(**2**) 1996 p. 56. Amnewidiwyd adran 463 gan adran 172 o Ddeddf Addysg 2002 (p. 32). Diwygiwyd is-adran (1) gan adran 26 o Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (dccc 2) a pharagraff 4 o Atodlen 1 iddi, a chan O.S. 2010/1158 ac O.S. 2016/463 (Cy. 131). Mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol i'r rheoliadau hyn.

(**1**) 1974 c. 53. Section 8A was inserted by section 49 of, and paragraphs 1 and 3 of Schedule 10 to, the Criminal Justice and Immigration Act 2008 (c. 4). Subsection (2) of section 8A was amended by sections 135 and 141 of, and paragraphs 1 and 2 of Schedule 24 and paragraphs 1 and 8 of Schedule 25 to, the Legal Aid Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 119 of and paragraphs 1 and 2(b) of Schedule 11 to, the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**2**) 1996 c. 56. Section 463 was substituted by section 172 of the Education Act 2002 (c. 32). Subsection (1) was amended by section 26 of, and paragraph 4 of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2) and by S.I. 2010/1158 and S.I. 2016/463 (W. 131). There are other amending instruments but none is relevant to these regulations.

(3) Mae cyfeiriadau ym mharagraff (1) at euogfarn yn cynnwys cyfeiriadau at y canlynol—

(a) euogfarn o drosedd sy'n dod o fewn adran 308(3)(a) o'r Cod Dedfrydu(**1**), a

(b) euogfarn o drosedd yn y lluoedd arfog o fewn yr ystyr a roddir i "service offence" yn Neddf y Lluoedd Arfog 2006(**2**) gan gynnwys unrhyw beth sydd o dan adran 376(1) a (2) o'r Ddeddf honno i'w drin fel euogfarn.

(4) At ddibenion paragraff (1), mae person yn ddarostyngedig i "ganfyddiad perthnasol" mewn cysylltiad â throsedd berthnasol—

(a) os yw'r person wedi ei gael yn ddieuog o'r drosedd oherwydd gorffwylledd,

(b) os cafwyd bod y person o dan anabledd a'i fod wedi cyflawni'r weithred y mae wedi ei gyhuddo ohoni mewn cysylltiad â'r drosedd, neu

(c) os yw llys, o dan y gyfraith sydd mewn grym mewn gwlad y tu allan i'r Deyrnas Unedig, wedi gwneud canfyddiad sy'n cyfateb i'r hyn a ddisgrifir yn is-baragraff (a) neu (b).

(5) At ddibenion paragraff (1), bydd ymddygiad yn berthnasol os yw'n ymddygiad—

(a) sydd â'r nod o danseilio gwerthoedd sylfaenol democratiaeth a chymorth i gymryd rhan yn y broses ddemocrataidd, rheolaeth y gyfraith, rhyddid yr unigolyn, a pharch a goddefgarwch y rhai sydd â ffydd a chredoau gwahanol at ei gilydd,

(b) y mae corff proffesiynol wedi dyfarnu ei fod yn groes i safonau proffesiynol, neu

(c) sydd mor amhriodol ei fod, ym marn yr awdurdod priodol, yn gwneud person yn anaddas i gymryd rhan yn y gwaith o reoli ysgol annibynnol.

(6) Yn ddarostyngedig i adrannau 4 ac 8A o Ddeddf Adsefydlu Troseddwyr 1974(**3**) ac Atodlen 2 iddi ac i unrhyw orchmynion a wneir o dan y darpariaethau hynny, mae cyfeiriadau ym mharagraff (1) at euogfarn

(3) References in paragraph (1) to a conviction include references to—

(a) a conviction of an offence falling within section 308(3)(a) of the Sentencing Code(**1**), and

(b) a conviction of a service offence within the meaning of the Armed Forces Act 2006(**2**) including anything that under section 376(1) and (2) of that Act is to be treated as a conviction.

(4) For the purposes of paragraph (1), a person is subject to a "relevant finding" in respect of a relevant offence if—

(a) the person has been found not guilty of the offence by reason of insanity,

(b) the person has been found to be under a disability and to have done the act charged against them in respect of the offence, or

(c) under the law in force in a country outside the United Kingdom a court has made a finding equivalent to that described in sub-paragraph (a) or (b).

(5) For the purposes of paragraph (1), conduct will be relevant if it is conduct which—

(a) is aimed at undermining the fundamental values of democracy and support for participation in the democratic process, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs,

(b) has been found to be in breach of professional standards by a professional body, or

(c) is so inappropriate that, in the opinion of the appropriate authority, it makes a person unsuitable to take part in the management of an independent school.

(6) Subject to sections 4 and 8A of and Schedule 2 to the Rehabilitation of Offenders Act 1974(**3**) and to any orders made under those provisions, references in paragraph (1) to a conviction or caution include

(**1**) Deddf Dedfrydu 2020 p. 17

(**2**) 2006 p. 52. Am ystyr "service offence" gweler adran 50(2). Diwygiwyd adran 50(2) gan adran 30 o Ddeddf y Lluoedd Arfog 2011 (p. 8) a pharagraff 3 o Atodlen 4 iddi, a chan adran 76 o Ddeddf Cyfiawnder Troseddol a'r Llysoedd 2015 (p. 2) a pharagraffau 4 a 5 o Atodlen 14 iddi.

(**3**) Mewnosodwyd Atodlen 2 gan adran 49 o Ddeddf Cyfiawnder Troseddol a Mewnfudo 2008 (p. 4) a pharagraffau 1 a 6 o Atodlen 10 iddi. Diwygiwyd Atodlen 2 gan adrannau 119 a 193 o Ddeddf yr Heddlu, Troseddu, Dedfrydu a'r Llysoedd 2022 (p. 32) a pharagraffau 1 a 3 o Atodlen 11 iddi, a chan adrannau 135 a 141 o Ddeddf Cymorth Cyfreithiol, Dedfrydu a Chosbi Troseddwyr 2012 (p. 10) a pharagraffau 1 a 3 o Atodlen 24 iddi.

(**1**) Sentencing Act 2020 c. 17.

(**2**) 2006 c. 52. For the meaning of "service offence" see section 50(2). Section 50(2) was amended by section 30 of and paragraph 3 of Schedule 4 to the Armed Forces Act 2011 (c. 8) and section 76 of and paragraphs 4 and 5 of Schedule 14 to the Criminal Justice and Courts Act 2015 (c. 2).

(**3**) Schedule 2 was inserted by section 49 of, and paragraphs 1 and 6 of Schedule 10 to, the Criminal Justice and Immigration Act 2008 (c. 4). Schedule 2 was amended by sections 119 and 193 of and paragraph 1 and 3 of Schedule 11 to the Police, Crime and Sentencing Courts Act 2022 (c. 32) and sections 135 and 141 of, and paragraphs 1 and 3 of Schedule 24 to, the Legal Aid Sentencing and Punishment of Offenders Act 2012 (c. 10).

neu rybuddiad yn cynnwys cyfeiriadau at euogfarn neu rybuddiad sydd wedi ei disbyddu neu wedi ei ddisbyddu (o fewn yr ystyr a roddir i "spent conviction" neu "spent caution" yn Neddf Adsefydlu Troseddwyr 1974).

(7) At ddibenion paragraff (1), mae person ("P") wedi ei euogfarnu o drosedd, neu wedi cael rhybuddiad mewn cysylltiad â throsedd, os yw P wedi ei euogfarnu neu wedi cael rhybuddiad mewn cysylltiad â throsedd—

(a) mewn unrhyw ran o'r Deyrnas Unedig, neu

(b) o dan y gyfraith sydd mewn grym mewn gwlad y tu allan i'r Deyrnas Unedig.

(8) At ddibenion paragraff (7) mae P yn cyflawni trosedd o dan y gyfraith sydd mewn grym mewn gwlad y tu allan i'r Deyrnas Unedig os yw P yn cyflawni gweithred y gellir ei chosbi o dan y gyfraith sydd mewn grym yn y wlad honno ni waeth sut y disgrifir y weithred honno yn y gyfraith honno.

references to a conviction or caution that is spent (within the meaning of the Rehabilitation of Offenders Act 1974).

(7) For the purposes of paragraph (1) a person ("P") has been convicted of an offence, or been given a caution in respect of an offence, if P has been convicted or been given a caution in respect of an offence—

(a) in any part of the United Kingdom, or

(b) under the law in force in a country outside the United Kingdom.

(8) For the purposes of paragraph (7) P commits an offence under the law in force in a country outside the United Kingdom if P commits an act that is punishable under the law in force in that country however that act is described in that law.

Y weithdrefn ar gyfer rhoi cyfarwyddyd adran 167A

3.—(1) Cyn rhoi cyfarwyddyd adran 167A mewn cysylltiad â pherson rhaid i'r awdurdod priodol roi'r cyfle i'r person i gyflwyno sylwadau o ran pam na ddylai'r awdurdod priodol roi'r cyfarwyddyd.

(2) Rhaid i'r awdurdod priodol roi hysbysiad i'r person y caiff y person gyflwyno sylwadau o'r fath.

(3) Rhaid i'r awdurdod priodol roi'r hysbysiad o dan baragraff (2) drwy ei anfon at y person drwy'r post.

(4) Caiff person y rhoddir hysbysiad iddo o dan baragraff (2) gyflwyno sylwadau ar ffurf ysgrifenedig o fewn y cyfnod o 60 o ddiwrnodau sy'n dechrau â'r diwrnod yr anfonwyd yr hysbysiad.

(5) Os—

(a) yw person y rhoddir hysbysiad iddo o dan baragraff (2) yn gofyn am gael cyflwyno sylwadau ar ôl i'r cyfnod a grybwyllir ym mharagraff (4) ddod i ben, a

(b) yw'r awdurdod priodol wedi ei fodloni bod rhesymau da pam y methodd y person â chyflwyno sylwadau mewn pryd,

caiff yr awdurdod priodol ganiatáu cyfnod pellach y mae'r awdurdod priodol yn ystyried ei fod yn rhesymol i'r person i gyflwyno sylwadau.

(6) Nid yw paragraffau (1), (2) na (3) yn gymwys pan na fo'r awdurdod priodol yn gwybod a phan na fo modd iddo ganfod yn rhesymol ymhle y mae'r person o dan sylw.

(7) Os rhoddir cyfarwyddyd adran 167A mewn cysylltiad â pherson rhaid i'r awdurdod priodol gymryd pob cam rhesymol i hysbysu'r person am y ffaith honno.

Procedure for giving a section 167A direction

3.—(1) Before giving a section 167A direction in respect of a person the appropriate authority must give the person the opportunity to make representations as to why the appropriate authority should not give the direction.

(2) The appropriate authority must give the person notice that the person may make such representations.

(3) The appropriate authority must give the notice under paragraph (2) by sending it to the person by post.

(4) A person to whom notice is given under paragraph (2) may make representations in writing within the period of 60 days starting with the day on which the notice was sent.

(5) If—

(a) a person to whom notice is given under paragraph (2) asks to make representations after the period mentioned in paragraph (4) has expired, and

(b) the appropriate authority is satisfied that there were good reasons why the person failed to make representations in time,

the appropriate authority may allow a further period of time that the appropriate authority considers reasonable for the person to make representations.

(6) Paragraphs (1), (2) and (3) do not apply where the appropriate authority does not know and cannot reasonably ascertain the whereabouts of the person concerned.

(7) If a section 167A direction is given in respect of a person the appropriate authority must take all reasonable steps to notify the person of that fact.

Achosion pan gaiff yr awdurdod priodol amrywio neu ddirymu cyfarwyddyd adran 167A

4. Yr achosion rhagnodedig pan gaiff yr awdurdod priodol amrywio neu ddirymu cyfarwyddyd adran 167A yw—

(a) pan fo'r person y rhoddwyd y cyfarwyddyd mewn cysylltiad ag ef wedi ceisio ei gael wedi ei amrywio neu wedi ei ddirymu ar un o'r seiliau a nodir yn rheoliad 5(1),

(b) pan fo'r awdurdod priodol yn meddu ar wybodaeth sy'n berthnasol i'r penderfyniad i roi'r cyfarwyddyd cynharach nad oedd gan yr awdurdod priodol ar yr adeg y gwnaed y penderfyniad, neu

(c) pan fo'r awdurdod priodol yn meddu ar dystiolaeth o newid perthnasol yn amgylchiadau'r person y rhoddwyd y cyfarwyddyd mewn cysylltiad ag ef, sy'n digwydd ers i'r cyfarwyddyd gael ei roi,

a phan fo'r awdurdod priodol yn ystyried ei bod yn briodol amrywio neu ddirymu'r cyfarwyddyd.

Y seiliau y caniateir ceisio amrywio neu ddirymu cyfarwyddyd adran 167A arnynt

5.—(1) Y seiliau rhagnodedig y caiff person sy'n ddarostyngedig i gyfarwyddyd adran 167A geisio ei gael wedi ei amrywio neu wedi ei ddirymu arnynt yw—

(a) bod euogfarn, rhybuddiad neu ganfyddiad y rhoddwyd y cyfarwyddyd ar ei sail wedi ei diddymu neu wedi ei ddiddymu,

(b) bod euogfarn neu rybuddiad y rhoddwyd y cyfarwyddyd ar ei sail, ers i'r cyfarwyddyd gael ei roi, wedi ei disbyddu neu wedi ei ddisbyddu o fewn yr ystyr a roddir i "spent conviction" neu "spent caution" yn Neddf Adsefydlu Troseddwyr 1974,

(c) bod euogfarn neu rybuddiad y rhoddwyd y cyfarwyddyd ar ei sail, ers i'r cyfarwyddyd gael ei roi, wedi dod yn euogfarn warchodedig neu'n rhybuddiad gwarchodedig o fewn yr ystyr a roddir i "protected conviction" neu "protected caution" yng Ngorchymyn Deddf Adsefydlu Troseddwyr 1974 (Eithriadau) 1975(**1**),

(**1**) O.S. 1975/1023, a ddiwygiwyd gan O.S. 2020/1373; mae offerynnau diwygio eraill, ond nid yw'r un ohonynt yn berthnasol i'r Rheoliadau hyn. Diffinnir "protected caution" a "protected conviction" yn erthygl 2A, a fewnosodwyd gan erthyglau 2 a 4 o Orchymyn Gorchymyn Deddf Adsefydlu Troseddwyr 1974 (Eithriadau) 1975 (Diwygio) (Cymru a Lloegr) 2013 (2013/1198).

Cases in which the appropriate authority may vary or revoke a section 167A direction

4. The prescribed cases in which the appropriate authority may vary or revoke a section 167A direction are where—

(a) the person in respect of whom the direction was given has sought to have it varied or revoked on one of the grounds set out in regulation 5(1),

(b) the appropriate authority is in possession of information relevant to the decision to give the earlier direction which the appropriate authority did not have at the time that the decision was made, or

(c) the appropriate authority is in possession of evidence of a material change of circumstances of the person in respect of whom the direction was given, occurring since the direction was given,

and the appropriate authority considers that it is appropriate to vary or revoke the direction.

Grounds on which variation or revocation of a section 167A direction may be sought

5.—(1) The prescribed grounds on which a person subject to a section 167A direction may seek to have it varied or revoked are that—

(a) a conviction, caution or finding on the grounds of which the direction was given has been quashed,

(b) a conviction or caution on the grounds of which the direction was given has, since the giving of the direction, become spent within the meaning of the Rehabilitation of Offenders Act 1974,

(c) a conviction or caution on the grounds of which the direction was given has, since the giving of the direction, become a protected conviction or protected caution within the meaning of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**1**),

(**1**) S.I. 1975/1023, amended by S.I. 2020/1373; there are other amending instruments, but none is relevant to these Regulations. "Protected caution" and "protected conviction" are defined in article 2A, which was inserted by articles 2 and 4 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (S.I. 2013/1198).

(d) yn achos cyfarwyddyd a roddir ar sail canfyddiad perthnasol, fod o leiaf bum mlynedd wedi mynd heibio ers i'r canfyddiad gael ei wneud,

(e) bod y person y rhoddwyd y cyfarwyddyd mewn cysylltiad ag ef yn gallu darparu gwybodaeth sy'n berthnasol i'r penderfyniad i roi'r cyfarwyddyd cynharach nad oedd gan yr awdurdod priodol ar yr adeg y gwnaed y penderfyniad, neu

(f) bod y person y rhoddwyd y cyfarwyddyd mewn cysylltiad ag ef yn gallu darparu tystiolaeth o newid perthnasol mewn amgylchiadau sy'n digwydd ers i'r cyfarwyddyd gael ei roi.

(2) At ddibenion paragraff (1)(e) ac (f), ni chaiff person geisio cael cyfarwyddyd adran 167A wedi ei amrywio na wedi ei ddirymu i'r graddau y mae achos y person yn anghyson â bod y person wedi ei euogfarnu o drosedd, neu wedi cael rhybuddiad mewn cysylltiad â throsedd.

(3) At ddibenion y rheoliad hwn, rhoddir cyfarwyddyd adran 167A ar sail euogfarn, rhybuddiad, canfyddiad neu ymddygiad os bodlonir y sail yn rheoliad 2(1) yn rhinwedd yr euogfarn, y rhybuddiad, y canfyddiad neu'r ymddygiad (yn ôl y digwydd).

Apelau: cyfyngu ar bŵer y Tribiwnlys Haen Gyntaf i ystyried apêl

6.—(1) Mae'r rheoliad hwn yn gymwys mewn perthynas â chyfarwyddyd adran 167A a roddir ar sail euogfarn am drosedd.

(2) Ni chaiff y Tribiwnlys Haen Gyntaf ystyried apêl o dan adran 167B(1) o Ddeddf 2002 yn erbyn y penderfyniad i roi'r cyfarwyddyd, neu i beidio ag amrywio neu ddirymu'r cyfarwyddyd, i'r graddau y mae achos yr apelydd yn anghyson â bod yr apelydd wedi ei euogfarnu o drosedd.

(3) At ddibenion paragraff (1) rhoddir cyfarwyddyd adran 167A ar sail euogfarn am drosedd os bodlonir y sail yn rheoliad 2(1) yn rhinwedd euogfarn am y drosedd.

Apelau: pwerau'r Tribiwnlys Haen Gyntaf

7.—(1) Mae'r rheoliad hwn yn gymwys—

(a) pan fo apêl wedi ei gwneud i'r Tribiwnlys Haen Gyntaf o dan adran 167B(1) o Ddeddf 2002 mewn cysylltiad â phenderfyniad i roi cyfarwyddyd adran 167A, neu benderfyniad i beidio ag amrywio neu ddirymu cyfarwyddyd adran 167A, a

(d) in the case of a direction given on the grounds of a relevant finding, at least five years have passed since the finding was made,

(e) the person in respect of whom the direction was given is able to provide information relevant to the decision to give the earlier direction which the appropriate authority did not have at the time that the decision was made, or

(f) the person in respect of whom the direction was given is able to provide evidence of a material change of circumstances occurring since the direction was given.

(2) For the purposes of paragraph (1)(e) and (f), a person may not seek to have a section 167A direction varied or revoked insofar as the person's case is inconsistent with the person having been convicted of, or cautioned in respect of, an offence.

(3) For the purposes of this regulation a section 167A direction is given on the grounds of a conviction, caution, finding or conduct if the ground in regulation 2(1) is met by virtue of the conviction, caution, finding or conduct (as the case may be).

Appeals: restriction on First-tier Tribunal's power to entertain appeal

6.—(1) This regulation applies in relation to a section 167A direction which is given on the grounds of a conviction for an offence.

(2) The First-tier Tribunal may not entertain an appeal under section 167B(1) of the 2002 Act against the decision to give the direction, or not to vary or revoke the direction, insofar as the appellant's case is inconsistent with the appellant having been convicted of an offence.

(3) For the purposes of paragraph (1) a section 167A direction is given on the grounds of a conviction for an offence if the ground in regulation 2(1) is met by virtue of a conviction for the offence.

Appeals: First-tier Tribunal's powers

7.—(1) This regulation applies where—

(a) an appeal has been made to the First-tier Tribunal under section 167B(1) of the 2002 Act in respect of a decision to give a section 167A direction, or a decision not to vary or revoke a section 167A direction, and

(b) pan fo'r Tribiwnlys Haen Gyntaf yn ystyried nad yw'r penderfyniad yn briodol.

(2) Caiff y Tribiwnlys Haen Gyntaf orchymyn i'r awdurdod priodol amrywio neu ddirymu'r cyfarwyddyd.

(3) Oni bai bod y partïon i apêl yn cytuno fel arall, rhaid i'r Tribiwnlys Haen Gyntaf, drwy arfer ei bwerau o dan y rheoliad hwn, beidio ag ystyried—

(a) unrhyw wybodaeth sy'n berthnasol i'r penderfyniad i roi cyfarwyddyd, neu i beidio ag amrywio neu ddirymu cyfarwyddyd, nad oedd gan yr awdurdod priodol ar yr adeg y gwnaed y penderfyniad;

(b) unrhyw dystiolaeth o newid perthnasol yn amgylchiadau'r person o dan sylw sy'n digwydd ers i'r penderfyniad i roi cyfarwyddyd neu i beidio ag amrywio neu ddirymu cyfarwyddyd gael ei wneud.

Cyfarwyddydau a roddwyd o dan adran 142 o Ddeddf 2002

8.—(1) Mae'r seiliau rhagnodedig at ddibenion adran 171(1)(a) o Ddeddf 2006 y rhoddwyd cyfarwyddyd o dan adran 142 o Ddeddf 2002 (gwahardd rhag addysgu, etc.)(**1**) mewn cysylltiad â'r person arnynt yn seiliau sy'n ymwneud â chamymddygiad y person.

(2) Yr amod rhagnodedig y mae rhaid ei fodloni mewn cysylltiad â'r person (at ddibenion adran 171(1)(b) o Ddeddf 2006) yw na chaiff y person, o ganlyniad i'r cyfarwyddyd a roddwyd o dan adran 142 o Ddeddf 2002, gymryd rhan yn y gwaith o reoli ysgol annibynnol.

(3) Gan ddechrau â 14 Chwefror 2024, mae personau sy'n dod o fewn adran 171(1) o Ddeddf 2006 i'w trin fel pe bai'r cyfarwyddyd a roddwyd o dan adran 142 o Ddeddf 2002 yn gyfarwyddyd a roddwyd gan yr awdurdod priodol o dan adran 167A o Ddeddf 2002 at ddiben unrhyw ddeddfiad.

(b) the First-tier Tribunal considers that the decision is not appropriate.

(2) The First-tier Tribunal may order the appropriate authority to vary or revoke the direction.

(3) Unless the parties to an appeal agree otherwise, the First-tier Tribunal, in exercising its powers under this regulation, must not consider—

(a) any information relevant to the decision to give a direction, or not to vary or revoke a direction, which the appropriate authority did not have at the time the decision was made;

(b) any evidence of a material change of circumstances of the person concerned occurring since the decision to give a direction or not to vary or revoke a direction was made.

Directions given under section 142 of the 2002 Act

8.—(1) The prescribed grounds for the purposes of section 171(1)(a) of the 2006 Act on which a direction under section 142 of the 2002 Act (prohibition from teaching, etc.)(**1**) was given in respect of the person are grounds relating to the person's misconduct.

(2) The prescribed condition which must be satisfied in respect of the person (for the purposes of section 171(1)(b) of the 2006 Act) is that, as a result of the direction given under section 142 of the 2002 Act, the person may not take part in the management of an independent school.

(3) Starting with 14 February 2024 persons who fall within section 171(1) of the 2006 Act are to be treated as if the direction given under section 142 of the 2002 Act were a direction given by the appropriate authority under section 167A of the 2002 Act for the purpose of any enactment.

Jeremy Miles

Gweinidog y Gymraeg ac Addysg, un o Weinidogion Cymru
11 Ionawr 2024

Minister for Education and Welsh Language, one of the Welsh Ministers
11 January 2024

(**1**) Diddymwyd adran 142 yn rhannol gan adran 63(2) o Ddeddf Diogelu Grwpiau Hyglwyf 2006, a chan Atodlen 10 iddi, ar 12 Hydref 2009. Mae erthygl 4 o Orchymyn Deddf Diogelu Grwpiau Hyglwyf 2006 (Cychwyn Rhif 6, Darpariaethau Trosiannol ac Arbedion) 2009 yn arbed gweithredu adran 142 mewn perthynas â chyfarwyddyddau i wahardd personau rhag cymryd rhan yn y gwaith o reoli ysgol annibynnol ar sail camymddygiad.

(**1**) Section 142 was repealed in part by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006 on 12 October 2009. Article 4 of the Safeguarding Vulnerable Groups Act 2006 (Commencement No 6, Transitional Provisions and Savings) Order 2009 saves the operation of section 142 in relation to directions to prohibit persons from participating in the management of an independent school on grounds of misconduct.

©ⓗHawlfraint y Goron 2024

Argraffwyd a chyhoeddwyd yn y DU gan Y Llyfrfa Cyf dan awdurdod a goruchwyliaeth Jeff James, Rheolwr Llyfrfa Ei Fawrhydi ac Argraffydd Deddfau Senedd y Brenin.

© Crown copyright 2024

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.

ISBN 978-0-348-39528-0

£8.14

http://www.legislation.gov.uk/id/wsi/2024/28